

REMARKS

This paper is in response to the non-final Office Action dated 27 March 2003. Claims 1-17 are currently pending. Claims 3 and 9 have been objected to as to form. Claims 1-13 have been rejected on new grounds. Claims 14-17 have been added in this Response. Applicant gratefully acknowledges Examiner's suggestions for responding to the objections. Applicant, upon consideration of Examiner's grounds for rejection, traverses the rejections in every claim. Applicant's explanation and reasons for traversal follow.

Claims 3 and 9 have been amended as suggested by Examiner, and claim 12 has been amended to correct a transcription error. In claim 3, line 2, the word "second" has been changed to -- first --. This change corrects a transcription error from Applicant's first Response in that the marked up version did not include any modifier for the word "post" in line 2 but the clean version incorrectly added the word "second" before the word "post". The present change correctly identifies the "post" in line 2 as the "first vertical post" introduced in line 1. In claim 9, line 3, the word -- space -- has been added before the word "defined." This amendment corrects a transcription error between the marked up and clean versions of the claim in Applicant's first Response. It is not a change from the original claim language. These changes fully respond to Examiner's objections as to the form of the claims. In claim 12, line 2, the word "a" after the word "having" has been deleted to correctly describe the plural "opposing half parts." This amendment does not change the meaning or scope of the claim.

Claims 1-3, 6, 12, and 13 stand rejected as being anticipated by U.S. Patent 4,346,872 to Tornya. Applicant traverses each of these rejections for the reasons stated below.

With regard to claim 1, Tornya does not disclose "half parts," or "longitudinally spaced ribs. . . defining a space therebetween, a said board fitted into said space. . . ." First, the parts of Tornya Examiner has correlated to the "half parts" of claim 1 -- namely base portion 3 and spacers 8 -- are not half parts at all. Base portion 3 is a long channel piece whereas spacer 8 is a short spacer piece inserted

into and surrounded by a very small portion of the base portion 3. (col. 2, line 53 to col. 4, line 28) A short spacer 8 and a long channel 3 do not define "half parts." Second, the parts of Torny Examiner has correlated to the "longitudinally spaced ribs" of claim 1 -- namely V-beads 14 -- are not longitudinally spaced ribs. Rather, beads 14 are transversely spaced ridges across base portion 8. Third, adjacent pairs of ridges 14 in Torny do not define a space therebetween into which a board is fitted as required by claim 1. Nor is there a board fitted into any space between the ridges 14 on a single spacer. (Torny FIG. 4). Even if ridges 14 on adjacent spacers 8 were considered to constitute the "adjacent ribs," the adjacent ridges are not included in "one of said parts" as claimed, but rather on two adjacent spacers 8. Therefore, Torny neither anticipates nor renders obvious claim 1 because it fails to disclose each and every element and limitation in the claim. Because Torny neither anticipates nor makes obvious claim 1, claim 1 is in a position for allowance, notice of which is respectfully requested.

With regard to claim 2, in addition to reasons stated for claim 1, Applicant traverses this rejection for the following additional reasons. Applicant respectfully disagrees with Examiner's correlation between the claim element "longitudinally spaced ribs" and the engaging elements 4 in Torny. The engaging elements 4 are fasteners that secure the spacers 8 to the base portion 3. (See col. 2, lines 46-63). Engaging elements 4 can not be both a fastener and a rib as those terms are used in the claims. Because Torny does not contain every element of claim 2, it neither anticipates nor renders the claim obvious. Therefore, claim 2 is in a position for allowance, notice of which is respectfully requested.

With regard to claims 3 and 6, Examiner's rejections are traversed for the reasons already stated for claims 1. Because Torny does not contain every element of claims 3 or 6, it neither anticipates nor renders the claims obvious. Therefore, claims 2 and 6 are in a position for allowance, notice of which is respectfully requested.

With regard to claims 12 and 13, Examiner's rejection is traversed for the same reasons indicated for claim 1. Namely, that Torny does not disclose opposing half parts, at least one of said parts having

longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, and a board fitted into said space. Because Tornya does not contain every element of claims 12 and 13, it neither anticipates nor renders obvious the claims. Therefore, claims 12 and 13 are in a position for allowance, notice of which is respectfully requested.

Claims 4 and 7-9 have been rejected as being rendered obvious by Tornya as modified by Weaver. Applicant traverses each of these rejections for the reasons stated below.

With regard to claim 4, Examiner has failed to present a *prima facie* case of obviousness because the two combined references fail to disclose all of the claim elements. Namely, as set forth with regard to claim 1, Tornya fails to disclose opposing half parts, at least one of said parts having longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, and a board fitted into said space. Nor would it be obvious to modify Tornya to have these claim elements because there is no motivation for such a modification found in the prior art, and such a modification would substantially change the mode of operation of the Tornya disclosure. Because the combined teachings do not disclose all the claim elements, claim 4 is not rendered obvious by Tornya as modified by the teachings of Weaver. Therefore, claim 4 is in a position for allowance, notice of which is respectfully requested.

With regard to claims 7, 8, and 9, Examiner's rejections are traversed for the same reasons indicated for claim 4. Namely, the combined references fail to disclose or render obvious rails having separate half parts and longitudinally spaced ribs between which a board is fitted. Because the combined teachings do not disclose all the claim elements, claim 7, 8, and 9 are not rendered obvious by Tornya as modified by the teachings of Weaver. Therefore, claims 7, 8, and 9 are in a position for allowance, notice of which is respectfully requested.

Claims 5, 10, and 11 stand rejected as being rendered obvious by Tornya as modified by Weaver as applied to claim 4 and as further modified by Grimm. Applicant traverses each of these rejections for the reasons stated below.

With regard to claim 5, in addition to the reasons already stated for claims 1 and 4, Applicant traverses this rejection for the following reason. The combined references do not disclose at least one of said rails having separate half parts, each said part including cooperating fasteners, at least one said part having longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, and a said board fitted into said space, wherein each said first and second vertical posts fits between said parts of each of said rails. Grimm does disclose opposing rail sidewalls 25, 26 and 35, 36. However these are not half parts since it is apparent that the upper and lower rails 20, 21 each also include a cap 24, 34. (see col. 3, lines 40-62). Therefore, rail sidewalls 25, 26 and 35, 36 are at best opposing one third parts, but not opposing half parts. Furthermore, sidewall 25, 26, and 35, 36 do not include cooperating fasteners for securing the parts together. Sidewalls 25, 26, and 35, 36 are secured to the caps 24, 34 without contacting each other. That is not the same as being secured together as required by the claim. Finally, posts 14 are not fitted between opposing sidewalls 25, 26 or 35, 36. Rather, posts 14 are fitted between longitudinally adjacent sidewalls. However, this does not satisfy the requirements of the claim. Because Grimm does not supply the claim elements missing from Torny and Weaver, the combined references do not present a *prima facie* case for rendering claim 5 obvious. Therefore, claim 5 is in a position for allowance, notice of which is respectfully requested.

With regard to claim 10, Examiner's rejection is traversed for the same reasons indicated for claim 5. Namely, the combined references fail to disclose a rail including opposing half parts, at least one of said parts having longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, a said board fitted into said space, each said post fitted between said half parts. Therefore, for the same reasons, claim 10 is in a position for allowance, notice of which is respectfully requested.

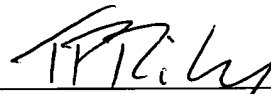
With regard to claim 11, in addition to the reasons already stated for claims 1 and 4, Applicant traverses this rejection for the following reasons. Applicant respectfully disagrees with Examiner's description of Grimm as disclosing a lower rail 34 carrying the post 14. As described in Grimm col. 5,

lines 9-35, Grimm's lower rail 34 is attached to the newel 14 after the newel has already been installed. Therefore, Grimm's newel 14 is carried by the floor or runner to which it has already been installed, not the lower rail. (see FIG. 4). In fact, rail 34 is carried by the newel 14, not the newel carried by the rail. Because the references cited do not disclose all of the claim's limitations, they neither anticipate nor make obvious claim 11. Therefore, claim 11 is in a position for allowance, notice of which is respectfully requested.

Applicant asserts that new claims 14-17 are not anticipated or made obvious by any of the prior art of record because the references fail to disclose all the limitations of each of the claims. Therefore, claims 14-17 are in a position for allowance, notice of which is respectfully requested.

Each of Examiner's objections and rejections for the pending claims having been specifically responded to by Applicant to put the claims in a position for allowance, Applicant respectfully submits that the Application as amended is in a position to issue. Therefore, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully Submitted,



Thomas P. Riley, Reg. No. 50,556
Botkin & Hall, LLP
105 East Jefferson Blvd.
Suite 400
South Bend, Indiana 46601-1913
Phone: 574-234-3900
Facsimile: 574-236-2839
Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First-Class Mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450; on 3 June 2003.



Thomas P. Riley, Reg. No. 50,556